IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	NO. 64001-1-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
JULIAN RENE TELLEZ,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: March 15, 2010
	)	

Lau, J. — Julian Tellez challenges his conviction on one count of possession with intent to manufacture or deliver cocaine and the accompanying school bus stop enhancement. He contends there is insufficient evidence to show that he intended to deliver the cocaine found on his person or that the nearby school bus stop was active. Because there is ample evidence from which a rational jury could infer that Tellez intended to deliver the cocaine and that the school bus stop was active, we affirm.

FACTS

The State charged Julian Tellez with possession with intent to manufacture or deliver cocaine, in violation of RCW 69.50.401(1), (2)(a). It also alleged that he committed this offense within 1,000 feet of a school bus stop route, making him eligible

for enhanced penalties under RCW 69.50.435.

At trial, Seattle Police Officer James Lee testified that on August 18, 2008, he was doing narcotics surveillance from a building's rooftop on Bell Street in downtown Seattle. He testified that he was using binoculars and had a good view of Bell Street from First to Third Avenue. He saw a man, later identified as Tellez, standing between Second and Third Avenue counting money. Two men approached, and Tellez removed something from his jacket pocket. Officer Lee testified that it looked like a clear baggie and was consistent with packaging commonly used by drug dealers based on his experience. He saw one of the men give Tellez multiple bills in exchange for some of the baggie's contents. Officer Lee testified that he observed a similar transaction before Tellez began to walk away. At that point, Officer Lee called Seattle Police Officers Diana Boggs and Martin Harris to arrest Tellez. Officer Harris testified that they arrested Tellez after a brief chase. He testified that they searched Tellez and found pieces of what appeared to be crack cocaine inside a plastic wrapper in his right pocket. The substance was later tested and found to be cocaine.

Thomas Bishop, the transportation manager for Seattle Public Schools, testified that school district records showed a school bus stop at the intersection of Third Avenue and Bell Street. He testified that he looked up this information on November 20, 2008, using the most recent records available, which were created based on stop locations during the 2007–08 school year. He also testified that bus stop locations generally stay the same from one year to the next. And he stated that school bus stops are considered active all year long regardless of the traditional school year because of

extended schedules and summer school programs. Michael Lynch, a licensed land use surveyor, testified that the intersection of Third Avenue and Bell Street was within 1,000 feet from where Officer Lee saw Tellez's apparent drug transactions.

The jury convicted Tellez as charged of possessing cocaine with intent to deliver. Using a special verdict form, it also found that the crime occurred within 1,000 feet of an active school bus stop. The court imposed a standard range sentence of 60 months plus 24 months based on the school bus stop enhancement, to run consecutively. He appeals.

ANALYSIS

Tellez contends there is insufficient evidence to support the jury's verdict. When reviewing a challenge to the sufficiency of the evidence, we must determine whether, considering the evidence in the light most favorable to the State, any rational trier of fact could have found the crime's essential elements beyond a reasonable doubt. State v. Echeverria, 85 Wn. App. 777, 782, 934 P.2d 1214 (1997). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence is as probative as direct evidence. State v. Moles, 130 Wn. App. 461, 465, 123 P.3d 132 (2005). And we defer to the jury's assessment of the persuasiveness of evidence and witness credibility. State v. Fiser, 99 Wn. App. 714, 719, 995 P.2d 107 (2000).

Tellez concedes he possessed cocaine but argues there was insufficient evidence that he intended to sell it rather than retain it for his own use. Washington

cases hold that the trier of fact may not infer an intent to deliver based on "'bare possession of a controlled substance, absent other facts and circumstances[.]'" State v. Brown, 68 Wn. App. 480, 483, 843 P.2d 1098 (1993) (quoting State v. Harris, 14 Wn. App. 414, 418, 542 P.2d 122 (1975)). But if there are other facts "suggestive of sale as opposed to mere possession" then the intent to deliver may be inferred. State v. Hagler, 74 Wn. App. 232, 236, 872 P.2d 85 (1994). Typical circumstantial evidence raising this inference includes "the observation of an exchange or possession of significant amounts of drugs or money." State v. Cobelli, 56 Wn. App. 921, 924, 788 P.2d 1081 (1989). In State v. Thomas, 68 Wn. App. 268, 273, 843 P.2d 540 (1992), we noted that evidence that Thomas appeared to be selling drugs just prior to his arrest tended to make it more probable that he intended to deliver the cocaine he possessed when he was arrested.

Here, Officer Lee testified that using his binoculars, he saw Tellez pull a clear baggie out of his pocket and exchange some of its contents for money. He noted that based on his experience, the baggie appeared consistent with the packaging commonly used in drug transactions. He testified that he saw Tellez engage in at least two such transactions with different people on the street and that he returned the baggie to his right pocket before walking away. Officer Harris testified that they arrested Tellez after a brief chase and found a plastic wrapper in his right pocket. The package contained cocaine. These circumstances go beyond mere possession and allowed the jury to infer that he intended to deliver the cocaine found in his possession.

Tellez also argues there was insufficient evidence to show he committed the crime

within 1,000 feet of an active school bus stop.[1] He points out that Bishop located the bus stop at Third Avenue and Bell based on school district records from the 2007–08 school year, which runs from August 2007 to June 2008. Because he was arrested on August 18, 2008, Tellez argues that there was no evidence that the stop was still active on the date of his offense. But Bishop also testified that school bus stops are considered active all year and are not limited to the traditional school calendar because of summer school and extension programs. And he testified that the most recent records available were from the school year just completed. Finally, he noted that school bus stops generally stay the same from one year to the next. Given this testimony, there was sufficient evidence for the jury to conclude that the bus stop at Third Avenue and Bell street was active at the time of Tellez's crime.[2]

For the foregoing reasons, we affirm.

Affirmed.

WE CONCUR:

[1] Tellez concedes that RCW 69.50.435 does not require the State to prove the school bus stop is "active." But, citing State v. Hickman, 135 Wn.2d 97, 99, 954 P.2d 900 (1998), he argues that by including this word in the special verdict form, the State assumed the burden of proving that additional fact. The State does not dispute this contention.

[2] In a pro se statement of additional grounds, Tellez contends that the State should have produced "all files of the bus stops for the school zones by month, dates, years, and time" and that it should have proved the identities of the "people that I made the sale of the drugs." Statement of Additional Grounds at 1. But these arguments go to the weight of the evidence, which is within the exclusive province of the jury. State v. Smith, 31 Wn. App. 226, 229, 640 P.2d 25 (1982).